not fulfilled the conditions precedent to the exercise of jurisdiction by this court in terms of section 49(1)(b). The petition is therefore dismissed.

Petition dismissed.

Solicitors: *Lim Kean Siew & Co.; S. Thillaimuthu.*

HONG KIM SUI & ANOR. v. MALAYAN BANKING BHD.

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) and Yong J.) March 4, 1971]

[Kota Kinabalu — Federal Court Civil Appeal No. 5 of 1970]

Practice and Procedure — Judgment — Order of judge giving leave to enter final judgment — Whether final judgment — Appeal therefrom — Form of notice of appeal — No address for service given on notice of appeal — Whether mere irregularity — Federal Court (Civil Appeals) (Transitional) Rules, 1963, r. 6(3) — Courts of Judicature Act, 1964, s. 68(2).

In this case the respondents had obtained an order giving them leave to enter final judgment against the appellants. The appellants filed a notice of appeal against the order. The respondents applied to have the notice of appeal set aside on the following grounds: (1) the judgment of the court being an interlocutory judgment, the appellants should have applied to the trial judge for further arguments in open court under the provisions of section 68(2) of the Courts of Judicature Act; (2) the notice of appeal was not in the form required by rule 6(3) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963; (3) the appellants had failed to give their or their solicitor's address on the notice of appeal for the purposes of service.

Held: (1) the order of the learned trial judge in this case was a final order and not an interlocutory order, and therefore the provisions of section 68(2) of the Courts of Judicature Act were not applicable;

(2) the failure to use the form required by rule 6(3) of the Federal Court (Civil Appeals) (Transitional) Rules was in this case a mere irregularity which did not render the proceedings void;

(3) the failure to give the address of the appellants or their solicitors was in this case a mere irregularity;

((4) leave should be given to the appellants to amend their notice of appeal to comply with rule 6 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963.

Cases referred to:-

(1) *Peninsular Land Development Sdn. Bhd.* v. *K. Ahmad Sulaiman (No. 2)* [1970] 1 M.L.J. 253.

(2) *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547.

(3) *Ratnam* v. *Cumarasamy & Anor.* [1962] M.L.J. 330.

(4) *Lopez* v. *Valliappa Chettiar* [1968] 1 M.L.J. 224, 227.

(5) *Hoerler* v. *Hanover Chaoutchouc etc. Co.* (1893) 10 T.L.R. 22.

FEDERAL COURT.

Shelley Yap Yeok Siew for the appellants.

Hawkins for the respondents.

Cur. Adv. Vult.

Azmi L.P.: The plaintiffs, the Malayan Banking Berhad, obtained leave under O. 14 r. 1 of the Rules of the Supreme Court from the High Court to sign final judgment against the defendants for the sum of $270,000 and interest etc. On the same day the order was drawn up and entered. About two days later, the defendants filed a notice of appeal against that order and a copy of it was served on the plaintiffs' solicitors. The plaintiffs now applied to us to have the notice of appeal set aside on four grounds. The first and main ground is that the judgment of the court being an interlocutory judgment, the defendants should have applied to the trial judge for further arguments in open court under the provisions of section 68(2) of the Courts of Judicature Act.

That sub-section reads as follows: —

"(2) No appeal shall lie from an interlocutory order made by a judge of the High Court in chambers, unless the Judge has certified, after application, within four days after the making of such order by any party for further argument in court, that he requires no further arguments, or unless leave is obtained from the Federal Court or from a Judge of the High Court."

The defendants had neither applied for a certificate from the judge that he required no further arguments, nor did they obtain leave from the judge or the Federal Court.

Counsel for the plaintiffs maintained that the order of the Judge giving leave to the plaintiffs to enter final judgment was an interlocutory order. On the other hand, counsel for the defendants submitted that this was a final order and in support of his argument read to us a passage from *Halsbury's* Laws of England, 3rd Edition, Vol. 22 page 742, paragraph 1060 and the comment of the learned editors at the footnote on the same page to the effect that the cases on the subject are not easy to reconcile.

The question has, however, been decided in the Federal Court in *Peninsular Land Development Sendirian Berhad* v. *K. Ahmad Sulaiman (No. 2)*[1]. In that case the Federal Court decided that the order of the court giving leave to the respondent to sign final judgment on a specially indorsed writ was a final judgment. As a matter of fact, I wrote the judgment of the Federal Court and in coming to the conclusion I had adopted the following test expressed by Lord Alverstone C.J. in *Bozson* v. *Altrincham Urban District Council*[2]: —

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the right of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

In adopting the test I was merely following the Malayan Court of Appeal in *Ratnam* v. *Cumarasamy & Anor.*[3] The question the Court of Appeal had to consider there was whether an order refusing extension of time to file record of appeal was final or not for the purposes of appeal under section 31(1) of the Appeals from the Supreme Court Ordinance 1958. In that case, the Court of Appeal applied the test enunciated by Lord Alverstone in *Bozson* v. *Altrincham Urban District Council, supra,* and the Privy Council in *Lopez* v. *Valliappa Chettiar*[4] expressed the view that *Ratnam* v. *Cumarasamy & Anor.* was decided on the right basis. For the above reasons I would therefore hold

that the order of the learned trial judge was a final order and that the plaintiffs' substantial objection must be dismissed.

Now as to the other three objections. The first and second of these three objections are really one objection. They refer to the form of the notice of appeal used by the defendants. The notice of appeal was not substantially in Form 1 as required by rule (6)(3) of the Federal Court (Civil Appeals) (Transitional) Rules 1963. The defendants had used the old form No. 19 made under O. 58 r. 1(3) of the Rules of the Supreme Court 1957, which had been revoked and replaced by the Federal Court (Civil Appeals) (Transitional) Rules. So far as I can see the only difference between the two forms is in the heading of the forms. The old form refers to O. 58 r. 1(3) and to the previous title of the Federal Court, whereas the new Form I refers to rule 6 of the Transitional Rules and to the Federal Court. In other respects the two forms are substantially the same. In my view, the failure to use the new form, which can be regarded as a mere irregularity did not render the proceedings void.

The last objection was the failure of the defendants to give their or their solicitor's address on the notice of appeal for the purpose of service but it so happened in this case the plaintiffs' solicitors were fully aware of the address of the solicitors for the defendants, because as Mr. Hawkins himself stated in his affidavit affirmed for the purpose of his application, that a copy of the notice of appeal was served by Shelley Yap Yeok Siew, the advocate for the appellants. He therefore knew the address of the solicitors for the defendants. In *Hoerler* v. *Hanover Chaoutchouc etc. Co.*,[5] the notice of the writ did not contain the address of the solicitor though it was given in the writ. It was held that the failure to put the address on the notice of the writ was a mere irregularity. I would therefore say also that the failure on the part of the defendants or their solicitors to put their address on the notice of appeal was a mere irregularity. I would give leave to the defendants to amend their notice of appeal to comply with the requirements of r. 6 of the Transitional Rules and to add the address of their solicitors on the notice. As to costs in the circumstances of the case I would order that the defendants shall have only half of the taxed costs.

Ismail Khan C.J. (Borneo): I have read the judgment of my brother Azmi with which I am in entire agreement.

Yong J.: I am also of the opinion that the proper test to be applied to determine whether an order made by a trial judge is or is not final was that laid down by Lord Alverstone C.J. in *Bozson* v. *Altrincham Urban District Council*[2].

In the instant case the order made by Lee Hun Hoe J. was clearly final as it had finally disposed of the rights of the parties as far as that court was concerned. The plaintiffs' contention that the order was interlocutory coming within the purview of the section 62(2) of the Courts of Judicature Act 1964 must therefore fail.

The plaintiffs in their motion also raised other minor points in that the defendants' notice of appeal had not quoted the correct form numbers and rules and had failed to give an address for service. It must be pointed out that the notes on the top of the form showing the numbers and rules are mere guide notes and do not strictly form part of the form. The plaintiffs have not complained that they had in any way been misled or had suffered damage thereby.

Failure to give an address in the notice of appeal could cause serious consequences on the question of service. Fortunately in this case the address of the defendants' solicitors is well known to the plaintiffs' solicitors as may be seen from the documents subsequently served by the plaintiffs' solicitors on the defendants' solicitors.

These alleged mistakes and omissions are mere irregularities, not affecting the merits of the case. I agree with the learned Lord President that leave be granted to the defendants to amend their notice of appeal under rule 22(1) of the Federal Court (Civil Appeals) (Transitional) Rules 1963 which reads: —

"The Court may at any time allow amendment of any Notice of Appeal, or notice of cross-appeal, or memorandum of appeal or other part of the record of appeal on such terms as it thinks fit."

The plaintiffs' motion is accordingly dismissed with costs. In view of the circumstances of this case I would allow the defendants only half of the taxed costs.

Motion dismissed.

SIMPSON v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) March 17, 1971]

[Malacca — Criminal Appeal No. 17 of 1970]

Women and Girls — Prostitution — Earnings — Living in part on — Habitual presence with or near prostitute in proximity of time and place — Presumption against accused — How rebutted — Women and Girls Protection Ordinance (S.S. Cap. 33), s. 6(1) and (3).

This was an appeal against conviction under section 6(1) of the Women and Girls Protection Ordinance. The appellant was charged with the offence of knowingly living in part on the earnings from prostitution of one Lai Pin Man. The facts are set out at length in the judgment.

The evidence revealed that the accused was always found together with or near the girl in proximity of time and place on all the occasions of prostitution by the girl. The learned magistrate convicted the accused on the grounds that he had failed to rebut the presumption arising under section 6(3) of the Ordinance which provides: "Where a male person is proved to live with or to be habitually in the company of a prostitute, or where any person is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall, in the absence of proof to the contrary, be deemed to be knowingly living on the earnings of prostitution."

Held, dismissing the appeal: (1) if a man knowingly assists a prostitute with the direct object of enabling her to